



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

April 11, 1977

**Honorable Ernest Angelo, Jr.
Mayor of the City of Midland
City Hall
Midland, Texas 79701**

Open Records Decision No. 159

Re: Whether private investigators report to City Council concerning candidate for Chief of Police position is public under the Open Records Act.

Dear Mayor Angelo:

You have requested our decision as to whether a private investigating firm's report to a city council regarding a candidate for the position of chief of police is excepted from required public disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

You state that, in the winter of 1975, the City Council of Midland employed a private investigating firm to make a confidential investigation and prepare a report relating to a police officer whom the Council was considering for promotion to the position of chief of police. The 63-page report, dated January 28, 1976, was delivered to the mayor upon completion, and was used extensively in connection with the Council's deliberations in this matter, held in executive session, but at no other time. It has, since its preparation, been maintained by the City as confidential information. A local television station has now requested that the report be made public.

The report consists of extensive interviews with a large number of persons regarding the police officer's moral character and fitness, the methods used in his work, and rumors of illegal or improper conduct on his part. Although remarks which do not directly relate to the individual police officer are interspersed throughout the report, it appears that the report as a whole ought to be excepted from public disclosure under section 3(a)(2) of the Open Records Act, which excepts

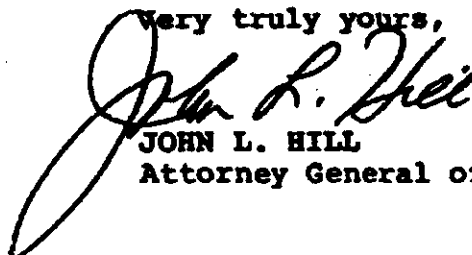
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information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . .

We have previously indicated that the Open Records Act and the Open Meetings Act, article 6252-17, V.T.C.S., "have similar purpose and should be construed in harmony." Open Records Decision No. 68 (1975) at 1; Attorney General Opinion H-484 (1974). The Open Meetings Act permits a governmental body to exclude the public from discussions "involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal" of an employee. V.T.C.S. art. 6252-17, § 2(g). In considering the subject report in executive session, the City Council of Midland was exercising this prerogative in dealing with personnel matters over which it is granted specific authority. The City Council is empowered by the City Charter "to supervise and control" the police department and "to appoint and remove" all officers and employees thereof. Article 3, section 24 and article 4, section 14, Charter of the City of Midland.

Selection of a chief of police by a public body authorized to do so necessarily involves consideration of a number of highly sensitive matters, and we believe that the public body is permitted some discretion in obtaining as much information as it can from whatever sources are available, with the assurance that the report of its investigation will not be made public. See Open Records Decisions Nos. 129 (1976); 106 (1975); 71 (1975). In our opinion, the exception for personnel records in section 3(a)(2) of the Open Records Act, when considered together with section 2(g) of the Open Meetings Act, provides ample justification for withholding the entire report from public disclosure. It is therefore our decision that the report relating to a candidate for the position of chief of police and prepared for the Midland City Council by a private investigating firm is excepted from required public disclosure under section 3(a)(2) of the Open Records Act.

Very truly yours,



JOHN L. HILL

Attorney General of Texas

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APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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